

In the High Court of Fiji  
at Suva  
Civil Action No. HBC 155 of 2018

Umesh Mani

Plaintiff

v

Commissioner of Police

Defendant

Counsel: Mr Devanesh Sharma for the plaintiff  
Ms O.Solimailagi with Ms S.Taueki and Ms S. Ali for  
the defendant

Date of hearing: 17<sup>th</sup> September,2018

Date of Judgment: 4<sup>th</sup> December, 2018

### **Judgment**

1. By originating summons filed on 29<sup>th</sup> May ,2018, the plaintiff seeks orders that the defendant within 7 days “*remove the irrelevant convictions from (his) Police Report dated 30<sup>th</sup> November, 2017*” and the defendant issue a new Police Report to him.
2. The plaintiff, in his affidavit in support states that he wrote to the defendant requesting a Police Report,(Report) as he lodged an application with the US Embassy, to migrate. The Police provided a Report. The Report contained his previous convictions, which led to his visa being rejected. The plaintiff states that he was granted a Certificate of Rehabilitation on 18<sup>th</sup> July,2017. Since his last conviction was 28 years ago, on 7<sup>th</sup> May,1990, and he has been granted a Certificate of Rehabilitation, his “*old convictions*” should not have been disclosed in the Police Report .

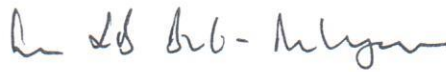
3. Rajesh Krishna, Police Officer, Director Legal at the Fiji Police Force headquarters, in his affidavit in reply states that the Report was not provided to the person it relates, but to the organization, body, or any other recipient nominated by the plaintiff, the US Embassy. The plaintiff has not provided any evidence to prove that the Report led to his visa being rejected. A Certificate of Rehabilitation is provided to a person after the rehabilitation period has expired and the defendant is satisfied that the person is entitled to the certificate. The plaintiff by making an application to the defendant for a Report to be issued to the US Embassy, consented to the disclosure of all his convictions. The defendant was entitled to disclose the Report, including all the convictions.

***The determination***

4. The question for determination in this summons is whether the defendant should not have disclosed the plaintiff's prior convictions in the Report issued to the US Embassy, as he was granted a Certificate of Rehabilitation.
5. Mr Sharma, counsel for the plaintiff drew my attention to sections 20 and 22 of the Rehabilitation of Offenders(Irrelevant Convictions) Act,1997, which prohibits a "*person*" or "*official*" from disclosing any information, where "*the rehabilitation period applicable to that conviction has expired*", unless his consent was obtained. Mr Sharma submitted that the plaintiff's consent was not obtained for the disclosure.
6. Ms Solimailagi, counsel for the defendant agreed that the Act makes it an offence to disclose convictions, when the rehabilitation period relating to the convictions has expired. The plaintiff's remedy is in a criminal court. She submitted further that the plaintiff, by making the application for the Report, consented to the disclosure. Consent was a defence to any charge under the Act.
7. Mr Sharma, in reply submitted that the plaintiff was not seeking a quashing or destruction of his records, but a removal of his irrelevant convictions, which are not permitted to be disclosed under the Act when the rehabilitation period relating to the convictions has expired. He further submitted that a person must expressly give his consent for the disclosure. Consent cannot be implied.

8. Section 20(1) (b) read with sub-section (2) provides that a “*person*” who publishes or discloses any information where “*the rehabilitation period applicable to that conviction has expired*”, commits an offence.
9. Section 23 read with sub-section (2) provides that an “*official*” who discloses or communicates any information where “*the rehabilitation period applicable to that conviction has expired*”, commits an offence.
10. Sections 21 and 25 provides that it is a defence to prove that the disclosure or publication was done with the consent of the person concerned.
11. The Rehabilitation of Offenders(Irrelevant Convictions)Act,1997, makes it an offence to disclose prior convictions, where a person has been granted a certificate of rehabilitation.
12. In any event, it is a defence under the Act, to prove that the disclosure was made with the consent of the person to whom it relates.
13. I agree with Ms Solimailagi that the plaintiff consented to the disclosure by making the application for the Report. The Report was provided to the US Embassy, as nominated by the plaintiff.
14. The plaintiff’s summons fails.
15. **Orders**
  - (a) The plaintiff’s originating summons is declined.
  - (b) The plaintiff shall pay the defendants costs summarily assessed in sum of \$1500.



  
**A.L.B. Brito-Mutunayagam**  
**JUDGE**  
4<sup>th</sup> December, 2018